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IN THE

Supreme Court of the United States

October Term 1961

No. 609

NEW YORK MOBILE HOMES ASSOCIATION, and EMPIRE STATE HOUSE TRAILER OWNERS ASSOCIATION, and WALTER B. MANHARD, suing on behalf of themselves and all other persons, firms or corporations similarly situated,

Appellants,

vs.

THOMAS B. STECKEL, as Supervisor of the Town of Chili, Monroe County, New York; CHARLES MASON, WARD RODER and RAY SICKLES, as Tax Assessors of the Town of Chili, Monroe County, New York; and CORNELIUS OUWELEEN, as Town Clerk of the Town of Chili, Monroe County, New York,

Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

STATEMENT AS TO JURISDICTION

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Appellants,

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Appellees.

STATEMENT AS TO JURISDICTION

The appellants, pursuant to the Rules of the United States Supreme Court (Rules 13 (2) and 15), file this, their statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to it, from the Judgment entered upon the decision of the New York Court of Appeals.

The Court of Appeals of the State of New York rendered a written opinion in the case; A copy of the wirtten opinion in the Court of Appeals is attached to this statement (9 N. Y.$_2$ 533).

The appeal herein is from a final Judgment made and entered on the decision of the Court of Appeals, affirming a Judgment of the Appellate Division of the Supreme Court, Fourth Judicial Department, which Court modified the Judgment of the Supreme Court of Monroe County which prayed for a Judgment declaring the rights of the parties and for Judgment declaring Chapter 726 of the Laws of 1954 as set forth in Sections 6 (a) and 6 (b) of the Tax Law of the State of New York, to be invalid and in violation of Article 1 Section 6 of the Constitution of the State of New York, and the Fourteenth Amendment to the Constitution of the United States and otherwise violative of the Federal and State Constitutions.

The Judgment upon the remittiur of the Court of Appeals was made and entered on June 14, 1961, amended Notice of Appeal to the Supreme Court of the United States being filed July 13, 1961, and on October 5, 1961, the Court of Appeals ordered the Monroe County Clerk to return the remittitur in order that it might be amended to show that in making its decision, the Court of Appeals held that the Legislation in question did not contravene the Constitution of the United States and more particularly the Fourteenth Amendment.

The Supreme Court of the United States has jurisdiction to review by direct appeal the Judgment complained of under the provisions of 28 U. S. C. 1257 (2).

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the Judgment on

direct appeal in this case. Broad River Power Co. v. State of South Carolina *ex rel.* Daniel, 1930, 50 S. Ct. 401, 281 U. S. 537, 74 L. ed. 1023, rehearing affirmed 51 S. Ct. 94, 282 U. S. 187; 75 L. ed. 287; Winters v. People of the State of New York, 1948, 68 S. Ct. 665, 333 U. S. 507, 92 L. ed. 840.

The Statute of the State of New York that is involved is Chapter 726 of the Laws of 1954, formerly contained in Sections 6 (a) and 6 (b) of the Tax Law of the State of New York; Section 6 (a) now contained in Section 102 Subd. 12 par. G of the Real Property Tax Law of the State of New York.

The particular sections of the Act concerned are Sections 6 (a) and 6 (b) which provide as follows:

> "(6-a) In addition to their meaning as provided in subdivision six, the terms 'land,' 'real estate' and 'real property' as used in this chapter, include all the forms of housing which are adaptable to motivation by a power connected thereto or which may be propelled by a power within themselves and which are or can be used as a house or living abode or habitation of one or more persons, or for business, commercial or office purposes either temporarily or permanently, and commonly called and hereafter referred to as 'trailers'; except (1) transient trailers which have been located within the boundaries of a tax district for less than sixty days and (2) trailers, which are for sale and which are not occupied.
>
> "(6-b) Trailers shall be assessed to the owners of real property on which they are located."

Statement of Case

The appellants herein are two membership corporations, duly organized and existing under and by virtue of the Laws of the State of New York and an individual Trailer Park owner. The two membership corporations are composed

of persons who, in many instances are owners of Trailer Parks and of the Real Property upon which these Trailer Parks are located. The Trailer Parks are located at various places in the State of New York, including the Town of Chili in Monroe County, New York; Some of the members of appellants, Empire State House Trailer Owners Association are owners of the trailers located on said Trailer Parks, but not the owners of the land, and they rent or lease from the owners of said real property. The appellant, Walter B. Manhard, is a resident of and the owner of certain real property in the Town of Chili, Monroe County, New York, upon which one of the aforesaid Trailer Parks is situated and against whose real property the assessment is made.

The appellee, Thomas B. Steckel, is supervisor of the Town of Chili, County of Monroe, New York, and the appellees, Charles Mason, Ward Roder and Roy Sickles are Assessors of the said Township and Cornelius Ouweleen is Town Clerk of said Town of Chili, New York, said Town being duly organized under the Laws of the State of New York.

The Legislature of the State of New York enacted in 1954 a law designated as Chapter 726 and known as Section 2, Subdivisions 6 (a) and 6 (b) of the Tax Law (*supra*).

The appellants brought this action in the Supreme Court of the State of New York to have this Legislation declared Unconstitutional and in violation of Article 1 Section 6 of the Constitution of the State of New York, and the Fourteenth Amendment to the Constitution of the United States and other provisions of the Federal and State Constitutions.

The action was commenced on October 1, 1954 in the Supreme Court, Monroe County and decided in favor of

the appellants (208 Misc. 308) 144 N. Y. S.$_2$ 82. The Appellate Division of the Supreme Court, Fourth Judicial Department, modified the Judgment in favor of the appellants (3 A. D.$_2$ 643) (1956) 158 N. Y. S.$_2$ 79 on the grounds that the Judgment was insufficient to comply with Section 440 of the Civil Practice Act of the State of New York and directed a new trial.

The case was again tried before Mr. Justice O'Brien who rendered a Judgment declaring the provisions of the Tax Law constitutional and dismissing the Complaint (12 Misc. 2nd 76) 176 N. Y. S. 2nd 482. The appellants thereafter appealed from the Judgment to the Appellate Division, Fourth Department, and the Appellate Division modified the Judgment and Order, declaring that appellants had standing to sue the same but holding that the Statute was not in violation of the Federal Constitution.

The Court of Appeals affirmed this Judgment and it is from the Judgment of Affirmance that the appellants appeal to the Supreme Court of the United States.

The question presented is a substantial constitutional question.

The Court of Appeals has held that the Statute as enacted and re-enacted is not in violation of the Federal Constitution and that the assessments made thereunder against the owners of land upon which the trailers are located, not violative of Article 1, Section 6 of the Constitution of the State of New York, or the Constitution of the United States and particularly the Fourteenth Amendment.

The language of the Statute clearly violates the Fourteenth Amendment to the Federal Constitution which pro-

vides, among other things, that no person shall be deprived of his property without due process of law.

More is involved here than the rights of the parties litigant. The public has an important interest in the outcome of this litigation. No means except the present suit, exist to protect the real property owner from the consequence of such illegal assessments.

Conclusion

WHEREFORE it is respectfully submitted that this Court has jurisdiction of this appeal under Section 1257 (2), Title 28, United States Code.

Respectfully submitted,

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Court of Appeals' Opinion

NEW YORK MOBILE HOMES ASSOCIATION *et al.*, Appellants, v. THOMAS B. STECKEL, as Supervisor of the Town of Chili, Monroe County, New York, *et al.*, Respondents.

Decided April 27, 1961.

FROESSEL, J. This litigation stems from a statute, underlying which is an attempt to secure reimbursement from trailer dwellers for some share of the expense of providing them with police and fire protection, educational facilities and the various other services rendered by a municipality to persons residing within its confines. By making his more or less permanent home in a trailer, an individual could derive the benefit of all the services provided by the local government, while leaving the burden of paying for them upon his neighbors who lived in more conventional type dwellings. Although the inequities of this situation were readily apparent, as all the cases on the subject agree, there was seemingly no solution of the problem since the New York State tax against personal property had been repealed (L. 1933, ch. 470; Tax Law, § 3), and trailers, of course, were traditionally considered to be personalty.

In 1952, however, the Assessors of the Town of Vestal proceeded to tax trailers, which were then located in a local trailer park, as real property. The owners of the land were assessed for the value of the trailers, despite the fact that none of the trailers was owned by them. In a proceeding to review the assessment, the Court held that it was improper to classify a trailer as real property and declared the assessment illegal (*Matter of Stewart v. Carrington*, 203 Misc. 543). Although fully aware that the greatly expanding trailer population imposes "severe fi-

nancial burdens on the localities involved", the Court noted that "Legislation is the proper recourse to pursue" (203 Misc., at p. 546).

A little more than a year after this decision was rendered, the Legislature responded by the enactment of chapter 726 of the Laws of 1954, which added a new subdivision 6-a to section 2 of the Tax Law.[1] It provided that the terms "land", "real estate", and "real property", as used in the Tax Law, shall "include all the forms of housing which are * * * commonly called * * * 'trailers'; except (1) transient trailers which have been located within the boundaries of a tax district for less than sixty days and (2) trailers which are for sale and which are not occupied. b. Trailers shall be assessed to the owners of the real property on which they are located."

Although repealed since the institution of this litigation, the substance of subdivision 6-a is presently contained in section 102 (subd. 12, par. [g]) of the Real Property Tax Law. The new section, however, no longer provides that the trailers "shall be assessed to the owners of the real property on which they are located". Rather, it now provides that "The value of any trailer or mobile home shall be included in the assessment of the land on which it is located; provided, however, that if either the trailer or mobile home or the land on which it is located is entitled to any exemption * * *, such trailer or mobile home shall be separately assessed in the name of the owner thereof" (Real Property Tax Law, § 102, subd. 12, par. [g]).

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[1] The following memorandum accompanied the proposed bill: "More and more, families in our state * * * are now residing in so-called house trailers. These families have children who are being educated in our schools and also demand police and fire protection, use our highways, courts and other governmental services. Present law does not provide an adequate means whereby these individuals may be assessed so that they pay their fair share of real estate taxes. This bill has been designed to correct this situation" (Memorandum of Senator Warren M. Anderson, N. Y. Legis. Ann., 1954, p. 306).

The present statute is in effect a re-enactment (see Real Property Tax Law, § 1602, subd. 5) of former subdivision 6-a of section 2 of the Tax Law. While it now directs the assessment against the land instead of against the owner of the land, section 304 of the Real Property Tax Law (formerly Tax Law, § 9) reads now virtually as it did then, namely, that "All assessments shall be against the real property itself". We are therefore of the opinion that the Legislature intended us to read the original statute as it was re-enacted.

Plaintiffs, two membership corporations composed of owners of trailer parks, and an individual owner of a trailer park, sought a judgment declaring chapter 726 of the Laws of 1954 unconstitutional on the ground that it deprives them of their property without due process of law. The trial Court (1) concluded that the plaintiffs lacked standing to attack the constitutionality of the statute (Tax Law, § 2, former subd. 6-a); (2) nevertheless, he passed upon the merits, declared the statute to be constitutional, and (3) dismissed the complaint. The Appellate Division found that the individual plaintiff had the requisite standing to attack the constitutionality of the statute and reversed so much of the judgment below as dismissed the complaint, while unanimously affirming the determination on the merits. It is from this determination that the appeal to us has been taken.

Plaintiffs on this appeal contend that (1) a trailer may not be properly classified as real property for tax purposes; (2) the statute is "ambiguous and unconstitutional"; and (3) the statute is so indefinite as to be incapable of equitable and proper enforcement. The initial question presented for our determination is whether the Legislature has the power to classify trailers as real property for

purposes of taxation. The answer under the authorities must be in the affirmative.

In *People ex rel. Holmes Elec. Protective Co. v. Chambers* (1 N. Y. 2d 760) we held that the relator's switchboards and other wiring and equipment located in its own central office and on its subscribers' premises were properly assessed as taxable real property under the specific provision of subdivision 6 of section 2 of the Tax Law, which declared the terms "land", "real estate" and "real property" to include, for tax purposes, "all telegraph lines, wires, poles and appurtenances".

Similarly, in *Matter of New York Tel. Co. v. Ferris* (257 App. Div. 415, 417, affd. 282 N. Y. 667), we affirmed a determination that telephone switchboards and other equipment were properly taxable as real property, despite a finding that such equipment was readily removable from the building in which it was housed without damage to either the property or the building. It was unnecessary for us to consider the character of the equipment at common law, since the statute designated this particular type of property as realty for tax purposes and, as the Appellate Division correctly noted, where the Tax Law has set up a standard of its own, it must govern (see, also, *Wagner v. Mallory*, 169 N. Y. 501; *Matter of Hazelwood Oil Co.*, 195 App. Div. 23).

Plaintiffs' attempt to distinguish these cases on the ground that they involved "property attached to the freehold" is untenable. In each of them the property involved, absent the statutory classification, would normally be considered as personalty and could readily be removed from the premises. Moreover, while the trailers here are being utilized as residences, and thus remain stationary, they too are "attached to the freehold". Their water supply flows

through a copper tube attached to the park outlet on the ground; they are connected to the park sewage system; gas, electricity and telephone connections are required to be made; and, although on wheels, many of the trailers have blocks set under them so that they will be level. Thus there is a rational basis for the legislative classification (see *Ætna Life Ins. Co. v. Aird*, 108 F. 2d 136; *Corning v. Town of Ontario*, 204 Misc. 38, 40).

Since trailers may thus properly be classified as real property for purposes of taxation, we turn to the next question: May they be assessed against the real property on which they are located?

The statute, as we have seen above, seeks to include the value of the trailer in the assessment of the land and improvements thereon. In this respect the situation presented is no different from that involved in any case where a lessee erects a building or other improvement on the realty of his landlord. Where the fee is privately owned, the real property tax attaches to the combined interests of all the parties interested in the land and the improvements thereon (*Matter of Fort Hamilton Manor v. Bogland*, 4 N. Y. 2d 192, 198). Although the fee owner will, in such a situation, of course, be required to pay a higher tax than if the land were vacant, he " 'will also protect himself by some stipulation in the lease against the increased taxation, and will in effect put the payment of it upon the lessee' " (*People ex rel. Van Nest v. Commissioners of Taxes*, 80 N. Y. 573, 577). So too in the instant situation, the trailer park owner has the means at his disposal, by way of rent, to allocate the increased tax upon the owner of the trailer—the individual who rightfully should pay for it.

In *Matter of Doughty v. Loomis* (9 A. D. 2d 574, 575, affd. 8 N. Y. 2d 722) a landlord sought to compel the town

assessors to assess separately the fee which he owned, and the buildings which had been erected thereon, and were owned by his lessees. The Appellate Division held: "Since the assessment is against the land itself, and since the name of the owner is merely one part of identification, the validity of these assessments in which the actual title holder of the land is described as owner is not open to doubt. No requirement of any statute compels the assessors to trace and follow internal arrangements made between lessors and lessees as to who should pay the tax". In affirming the decision below, we recognized that while this Court has held on several occasions that land and buildings *may* be separately assessed under certain circumstances,[2] neither case nor statute says that such a division must be made.

It is clear from the foregoing that the statute is not unconstitutional because the aggregate tax assessed against the land is computed by reference to the value of the property of more than one owner.

Plaintiffs' reliance upon *Hoeper v. Tax Comm.* (284 U. S. 206, 215) is misplaced. In the first place, it is readily distinguishable on its facts, involving as it does the validity of an income tax statute which sought to tax a husband upon the combined total of his and his wife's income, and thus place him in a higher tax bracket. In that connection, the Court noted that it was improper to "measure the tax on one person's property or income by reference to the property or income of another" (284 U. S., at p. 215). Furthermore, in such a case the husband —unlike the trailer park owner—would have no means of

[2] As, for example, when the fee is exempt from taxation—the situation provided for in section 102 (subd. 12, par. [g]) of the Real Property Tax Law. (See, also, *Matter of Fort Hamilton Manor v. Boyland*, 4 N. Y. 2d 192, 198, *supra*; *People ex rel. Hudson Riv. Day Line v. Franck*, 257 N. Y. 69.)

recouping the additional tax resulting from the value of another's property.

Plaintiffs additionally contend that the law is unconstitutional on its face because inequities may result from its application. In support of this contention, they refer to the hypothetical situations posed by the Courts in *Barnes v. Gorham* (12 Misc. 2d 285, 293-295), and *New York State Trailer Coach Assn. v. Steckel* (208 Misc. 308, 312-313). The rather complete record before us, however, does not disclose that any of these fears has materialized, and it is clear that "'One cannot invoke to defeat a law an apprehension of what might be done under it and, which if done, might not receive judicial approval.' (*Lehon v. City of Atlanta*, 242 U. S. 53, 56.)" (*Headley v. City of Rochester*, 272 N. Y. 197, 204.)

Moreover, in *Salzman v. Impellitteri* (305 N. Y. 414, 420), a taxpayer's action to enjoin the City of New York from entering into an agreement with the Transit Authority, and for a declaratory judgment, we held: "Whether the statutes will be constitutionally applied, or whether other constitutional questions, not now foreseeable, will arise, we cannot know in advance. Such problems, if any, must be dealt with when presented." If the statute is not properly administered, a proceeding may be brought to challenge the tax allegedly improperly assessed, and the action complained of may be reviewed (*People v. Calvar Corp.*, 286 N. Y. 419, 421-422).

Finally, it must be remembered that the "wisdom or fairness of the tax before us are not matters subject to our control or revision. We are only concerned with the power of the state to lay the tax" (*Harvester Co. v. Department of Taxation*, 322 U. S. 435, 444; see, also, *People*

ex rel. Hatch v. Reardon, 184 N. Y. 431, 443, 458, affd. 204 U. S. 152; *Genet v. City of Brooklyn*, 99 N. Y. 296, 306-307).

Accordingly, the judgment appealed from should be affirmed, with costs.

Chief Judge DESMOND and Judges DYE, FULD, VAN VOORHIS, BURKE and FOSTER concur.

Judgment affirmed.

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Supreme Court of the United States

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Appellees.

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

MOTION TO DISMISS

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Appellees.

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

MOTION TO DISMISS

Come now the appellees above named and move to dismiss the appeal taken to this Court by Notice of Appeal dated June 14, 1961 and amended July 13, 1961 on the ground that it does not present a substantial federal question.

Statement of the Case

The action, commenced on October 1, 1954, is one for judgment to declare unconstitutional New York Laws of 1954, ch. 726 providing the method for assessment of land

on which are located forms of housing adaptable to motivation, commonly referred to as mobile homes or trailers.

The Court of Appeals of the State of New York, the State's highest court, unanimously upheld the constitutionality of the statute (9 N. Y. 2d 533 [April 27, 1961]). In doing so, it affirmed the Appellate Division of the Supreme Court of the State of New York, Fourth Department (11 A. D. 2d 751 [1960]), which had unanimously affirmed the declaration of constitutionality made by the State Supreme Court after a trial without a jury. The Appellate Division had held that since the action was for declaratory judgment, the complaint should not have been dismissed, but instead judgment should have been the declaration of constitutionality. The Appellate Division also had held that the individual plaintiff in the case had standing to sue. The trial Court had held that he had not. Thus, the Appellate Division judgment and order was a modification of the judgment and order of the trial Court. The opinion of the trial Court is reported in 12 Misc. 2d 761 (1958). The cause had first been argued on the pleadings in the state Supreme Court and decided in favor of plaintiffs. The opinion is reported in 208 Misc. 308 (1955). The Appellate Division reversed upon the ground that the Supreme Court decision was insufficient for failure to comply with New York Civil Practice Act § 440. It directed that there be a "trial where the issues may be determined or a properly stipulated statement of facts upon which a decision should be made in conformity with section 440". This decision of the Appellate Division is reported in 3 A. D. 2d 643 (1956).

Thereafter the trial above referred to took place, resulting in the order and judgment declaring the statute in all respects constitutional, which, as to the constitutionality

of the statute, the Appellate Division and then the Court of Appeals of New York unanimously affirmed.

The Statute Involved

New York Laws of 1954, ch. 726, added to § 2 of the state's Tax Law—the "Definitions" section—a new subdivision 6-a, which, with certain exceptions, included trailers in the definition of the terms "land", "real estate" and "real property" as used in the Tax Law, and made them assessable to the owners of the real property on which they are located. The language of the subdivision was:

> "6-a. a. In addition to their meaning as provided in subdivision six, the terms 'land,' 'real estate,' and 'real property,' as used in this chapter, include all the forms of housing which are adaptable to motivation by a power connected thereto or which may be propelled by a power within themselves and which are or can be used as a house or living abode or habitation of one or more persons, or for business, commercial or office purposes, either temporarily or permanently, and commonly called and hereafter referred to as 'trailers' • • •."

Specifically excepted from this subdivision were the following:

> "(1) transient trailers which have been located within the boundaries of a tax district for less than sixty days and
>
> (2) trailers which are for sale and which are not occupied."

Paragraph b of the subdivision provided that

> "Trailers shall be assessed to the owners of the real property on which they are located."

Following the decision of the trial Court, and prior to the argument and decision of the case in the Appellate Division, and therefore necessarily before the argument and decision of the case in the Court of Appeals, there had been enacted, and become effective, a new Real Property Tax Law in which were incorporated most of the provisions theretofore in the state's Tax Law, Village Law, Education Law and other miscellaneous statutes, relating to the assessment and taxation of real property. "Substantive change" of such provisions was not intended (Memorandum of Advisory Committee to Board of Equalization and Assessment appended to bill which became Real Property Tax Law, p. xxi, McKinney's Consolidated Laws of New York, Book 49A, Real Property Tax Law; L. 1958, ch. 959, p. 2123 note).

The provision which replaced Tax Law, § 2, subd. 6-a, is § 102, subd. 12, paragraph g. It provides:

> "(g) Forms of housing adaptable to motivation by a power connected thereto, commonly called 'trailers' or 'mobile homes', which are or can be used for residential, business, commercial or office purposes, except those (1) located within the boundaries of an assessing unit for less than sixty days or (2) unoccupied and for sale. The value of any trailer or mobile home shall be included in the assessment of the land on which it is located; provided, however, that if either the trailer or mobile home or the land on which it is located is entitled to any exemption pursuant to article four of this chapter, such trailer or mobile home shall be separately assessed in the name of the owner thereof;".

Section 1602(5) of the new Real Property Tax Law, entitled "Saving clause", declares that it was intended by the repeal and re-enactment of certain provisions of the Tax Law enumerated therein, including the repeal of sec-

tion 2, subdivision 6-a of the Tax Law, re-enacted in § 102(12) of the Real Property Tax Law

> "* * * to effectuate a continuation and restatement, without change in substance or effect, of the provisions of such laws and the classification of any property as real property or personal property, as the case may be, shall not be broadened, increased, discontinued, diminished, affected or impaired by reason of such re-enactment."

The New York courts so read the statute (9 N. Y. 2d, at p. 537). Appellants had not raised any issue either in the Appellate Division or Court of Appeals by reason of the 1958 re-enactment of the 1954 statute upon which the action had been started.

ARGUMENT

The constitutionality of the statute here involved rests on clear and established grounds so that there is no substantial question under the Constitution of the United States warranting this Court taking jurisdiction.

Only if the case presents a substantial question arising under the Constitution of the United States would jurisdiction exist under United States Code, Title 28, § 1257. (Rule 16, [1, 6] of this Court.)

Appellants in their Jurisdictional Statement (pp. 5-6) declare that the "language" of the statute violates the due process clause of the Constitution. They do not go beyond this assertion. They do not indicate in what respect they contend there is a failure of due process, or what "language" in the statute they contend violates the Fourteenth Amendment. It would appear that it was necessary for appellants to at least endeavor to so specify,

and that they cannot expect this Court to take jurisdiction on the basis of their general assertion.

The highest Court of the State in its opinion, carefully considering this enactment in the field of tax legislation, found the statute not to be violative of the Constitution. The Court found (1) that the Legislature had the power to classify trailers as real property for purposes of taxation (9 N. Y. 2d, at p. 538); (2) that there was a rational basis for the classification (p. 539); (3) that the statute is not unconstitutional by reason of the fact that the aggregate tax assessed against the land is computed by reference to the value of the property of more than one owner (p. 540); (4) that a contention of possible inequities in application of the law were not ground for holding it unconstitutional; (5) that, moreover, the record of the trial did not disclose that any inequities had occurred; and (6) that there was ample relief available if in a particular situation an assessment were improper (pp. 540-541).

It is submitted that there is not a substantial federal question in this case warranting a hearing by this Court.

CONCLUSION

The motion to dismiss should be granted.

Dated: February 8, 1962.

Respectfully submitted,

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Office-Supreme Court, U.S.
FILED
FEB 28 196[illegible]
JOHN F. DAVIS, CLERK

Supreme Court of the United States

No. 609—October Term 1961

NEW YORK MOBILE HOMES ASSOCIATION, and EMPIRE STATE HOUSE TRAILER OWNERS ASSOCIATION, and WALTER B. MANHARD, suing on behalf of themselves and all other persons, firms or corporations similarly situated,

Appellants,

against

THOMAS B. STECKEL, as Supervisor of the Town of Chili, Monroe County, New York; CHARLES MASON, WARD RODER and RAY SICKLES, as Tax Assessors of the Town of Chili, Monroe County, New York; and CORNELIUS OUWELEEN, as Town Clerk of the Town of Chili, Monroe County, New York,

Appellees.

REPLY TO MOTION TO DISMISS

The Appellants present this reply to the motion to dismiss:

ARGUMENT

The case here presents a substantial question under the Constitution of the United States, and its amendments. It is argued by the Appellees that no substantial question is here presented, warranting this Court in taking jurisdiction. The appellees, however, fail to call the Court's attention to the Order of the Court of Appeals of the State of New York, directing the return of the remittitur, and the determination of the Court of Appeals thereon as follows:

> "Upon the appeal herein there was presented, and necessarily passed upon, a question under the Constitution of the United States, *viz.:* Whether section 2, subd. 6-a of the Tax Law of the State of New York, reenacted as Section 102, subd. 12 (g) of the Real Property Tax Law of the State of New York, is in violation of or contrary to the provisions of the Constitution of the United States particularly the Fourteenth Amendment, which provides that no person shall be deprived of his property without due process of law. The Court of Appeals held that it is not".

This Order of the Court of Appeals expressly states that there was passed upon by the Court of Appeals, a question concerning the Constitution of the United States and particularly the Fourteenth Amendment thereto.

It clearly appears that the very decision which appellees rely upon on this motion to divest this Court of jurisdiction, is in fact the very basis for its jurisdiction.

The Supreme Court of the United States has held in Kerhoff vs. St. Nicholas Cathedral, 344 U. S. 94; 73 S. C. 143, 97 Lawyers Ed. 120 (1952) that

> "Because of the Constitutional question thus generally involved, we noted probable jurisdiction—the unequivocal remittitur of the New York Court of Appeals 302 N. Y. 689, 98 N. E. 2nd 485 specifically stating the Constitutionality of the Statute was necessary ground for decision compels the view, and precludes any doubt as to the propriety of our determination of the Constitutional Issue on the merits 'Grayson vs. Harris, 267 U. S. 352; Indiana *ex rel.* Anderson vs. Brand, 303 U. S. 95' ".

In the instant case, the Constitutional question has obtained from the drafting of the complaint as contained in the Record of the Court of Appeals at folios 33-34, to the Decision of the Court of Appeals 9 N. Y. 2nd 533.

Specifically the Record is concerned clearly with a Constitutional question, which Constitutional question has been in the case since its very beginning, to wit: Whether section 2 subn. 6a *and 6b* (Italics added) of the Tax Law of the State of New York, re-enacted as Section 102 subn. 12 (g) of the Real Property Tax Law of the State of New York, is in violation of or contrary to the provisions of the Constitution of the United States and particularly the Fourteenth Amendment.

The Record in the Court of Appeals of the State of New York (fols. 33-34, 101, 131-133, 171) show that property owned by one person is being taxed for an obligation owed by another. This amounts to a taking of property without due process. Clearly this presents a substantial Constitutional question concerned as it is with a nation-wide situation. Trailers and Mobile Homes are in widespread use throughout the nation, and the intervention of this Court is respectfully requested in order that the law may be definitely settled involving and concerned as it is with the rights of many thousands of persons.

The Court of Appeals in its Decision 9 N. Y. 2nd 533, at page 539 states:

> "so in the instant situation, the Trailer Park owner has the means at his disposal by way of rent, to allocate the increased tax upon the owner of the trailer, the individual who rightfully should pay for it".

We believe that this conclusory statement of the Court of Appeals is neither justified nor legally correct. We are concerned with the rights of individuals who are being taxed, on property which these individuals do not own.

The fact that the property owner may be able to retrieve a portion of his assessment from the owner of the trailer, may well be a measure of expediency; however, expediency

is not and should not take the place of law in this nation of ours.

The Appellants therefore believe that the motion to dismiss should be denied and pray that this Court take jurisdiction in view of the fact that the determination of the Court of Appeals presents and is concerned with the application of the Fourteenth Amendment of the Federal Constitution, and clearly concerns the right of a State to enact Legislation of the kind and type here concerned.

The motion to dismiss should be denied.

Dated: February 22, 1962.

Respectfully submitted,

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